

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

Leshell, Inc., a California Limited
Liability Company; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Leshell, Inc., a California Limited Liability Company; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Leshell, Inc. owned the real property located at or about 950 E. Calaveras Blvd., Milpitas, California, between June 2019 and October 2019.

3. Defendant Leshell, Inc. owns the real property located at or about 950

1 E. Calaveras Blvd., Milpitas, California, currently.

2 4. Defendant Leshell, Inc. owned Shell located at or about 950 E.
3 Calaveras Blvd., Milpitas, California, between June 2019 and October 2019.

4 5. Defendant Leshell, Inc. owns Shell ("Gas Station") located at or about
5 950 E. Calaveras Blvd., Milpitas, California, currently.

6 6. Plaintiff does not know the true names of Defendants, their business
7 capacities, their ownership connection to the property and business, or their
8 relative responsibilities in causing the access violations herein complained of,
9 and alleges a joint venture and common enterprise by all such Defendants.
10 Plaintiff is informed and believes that each of the Defendants herein,
11 including Does 1 through 10, inclusive, is responsible in some capacity for the
12 events herein alleged, or is a necessary party for obtaining appropriate relief.
13 Plaintiff will seek leave to amend when the true names, capacities,
14 connections, and responsibilities of the Defendants and Does 1 through 10,
15 inclusive, are ascertained.

16
17 **JURISDICTION & VENUE:**

18 7. The Court has subject matter jurisdiction over the action pursuant to 28
19 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
20 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

21 8. Pursuant to supplemental jurisdiction, an attendant and related cause
22 of action, arising from the same nucleus of operative facts and arising out of
23 the same transactions, is also brought under California's Unruh Civil Rights
24 Act, which act expressly incorporates the Americans with Disabilities Act.

25 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
26 founded on the fact that the real property which is the subject of this action is
27 located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

10. Plaintiff went to the Gas Station in June 2019 (twice) and October 2019 with the intention to avail himself of its goods or services, motivated in part to determine if the defendants comply with the disability access laws.

11. The Gas Station is a facility open to the public, a place of public accommodation, and a business establishment.

12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed to provide wheelchair accessible parking in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

13. Subsequent to plaintiff's October 2019 visit, the defendants installed a parking space marked and reserved for persons with disabilities. However, the parking space has slopes that are not in conformance with the ADA Standards.

14. On information and belief the defendants currently fail to provide wheelchair accessible parking.

15. Additionally, on the dates of the plaintiff's visits, the defendants failed to provide wheelchair accessible restrooms in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

16. On information and belief the defendants currently fail to provide wheelchair accessible restrooms.

17. These barriers relate to and impact the plaintiff's disability. Plaintiff personally encountered these barriers.

18. As a wheelchair user, the plaintiff benefits from and is entitled to use wheelchair accessible parking and restrooms. By failing to provide accessible facilities, the defendants denied the plaintiff full and equal access.

19. The failure to provide accessible facilities created difficulty and discomfort for the Plaintiff.

20. The defendants have failed to maintain in working and useable conditions those features required to provide ready access to persons with

1 disabilities.

2 21. The barriers identified above are easily removed without much
3 difficulty or expense. They are the types of barriers identified by the
4 Department of Justice as presumably readily achievable to remove and, in fact,
5 these barriers are readily achievable to remove. Moreover, there are numerous
6 alternative accommodations that could be made to provide a greater level of
7 access if complete removal were not achievable.

8 22. Plaintiff will return to the Gas Station to avail himself of its goods or
9 services and to determine compliance with the disability access laws once it is
10 represented to him that the Gas Station and its facilities are accessible.
11 Plaintiff is currently deterred from doing so because of his knowledge of the
12 existing barriers and his uncertainty about the existence of yet other barriers
13 on the site. If the barriers are not removed, the plaintiff will face unlawful and
14 discriminatory barriers again.

15 23. Given the obvious and blatant nature of the barriers and violations
16 alleged herein, the plaintiff alleges, on information and belief, that there are
17 other violations and barriers on the site that relate to his disability. Plaintiff will
18 amend the complaint, to provide proper notice regarding the scope of this
19 lawsuit, once he conducts a site inspection. However, please be on notice that
20 the plaintiff seeks to have all barriers related to his disability remedied. See
21 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
22 encounters one barrier at a site, he can sue to have all barriers that relate to his
23 disability removed regardless of whether he personally encountered them).

24
25 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
26 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
27 Defendants.) (42 U.S.C. section 12101, et seq.)

28 24. Plaintiff re-pleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this
2 complaint.

3 25. Under the ADA, it is an act of discrimination to fail to ensure that the
4 privileges, advantages, accommodations, facilities, goods and services of any
5 place of public accommodation is offered on a full and equal basis by anyone
6 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
7 § 12182(a). Discrimination is defined, inter alia, as follows:

8 a. A failure to make reasonable modifications in policies, practices,
9 or procedures, when such modifications are necessary to afford
10 goods, services, facilities, privileges, advantages, or
11 accommodations to individuals with disabilities, unless the
12 accommodation would work a fundamental alteration of those
13 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

14 b. A failure to remove architectural barriers where such removal is
15 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
16 defined by reference to the ADA Standards.

17 c. A failure to make alterations in such a manner that, to the
18 maximum extent feasible, the altered portions of the facility are
19 readily accessible to and usable by individuals with disabilities,
20 including individuals who use wheelchairs or to ensure that, to the
21 maximum extent feasible, the path of travel to the altered area and
22 the bathrooms, telephones, and drinking fountains serving the
23 altered area, are readily accessible to and usable by individuals
24 with disabilities. 42 U.S.C. § 12183(a)(2).

25 26. When a business provides parking for its customers, it must provide
26 accessible parking.

27 27. Here, accessible parking has not been provided.

28 28. When a business provides facilities such as restrooms, it must provide

1 accessible restrooms.

2 29. Here, accessible restrooms have not been provided.

3 30. The Safe Harbor provisions of the 2010 Standards are not applicable
4 here because the conditions challenged in this lawsuit do not comply with the
5 1991 Standards.

6 31. A public accommodation must maintain in operable working condition
7 those features of its facilities and equipment that are required to be readily
8 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

9 32. Here, the failure to ensure that the accessible facilities were available
10 and ready to be used by the plaintiff is a violation of the law.

11
12 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
13 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
14 Code § 51-53.)

15 33. Plaintiff repleads and incorporates by reference, as if fully set forth
16 again herein, the allegations contained in all prior paragraphs of this
17 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
18 that persons with disabilities are entitled to full and equal accommodations,
19 advantages, facilities, privileges, or services in all business establishment of
20 every kind whatsoever within the jurisdiction of the State of California. Cal.
21 Civ. Code §51(b).

22 34. The Unruh Act provides that a violation of the ADA is a violation of the
23 Unruh Act. Cal. Civ. Code, § 51(f).

24 35. Defendants’ acts and omissions, as herein alleged, have violated the
25 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
26 rights to full and equal use of the accommodations, advantages, facilities,
27 privileges, or services offered.

28 36. Because the violation of the Unruh Civil Rights Act resulted in difficulty,

1 discomfort or embarrassment for the plaintiff, the defendants are also each
2 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
3 (c).)

4 37. Although the plaintiff was markedly frustrated by facing discriminatory
5 barriers, even manifesting itself with minor and fleeting physical symptoms,
6 the plaintiff does not value this very modest physical personal injury greater
7 than the amount of the statutory damages.

8
9 **PRAYER:**

10 Wherefore, Plaintiff prays that this Court award damages and provide
11 relief as follows:

12 1. For injunctive relief, compelling Defendants to comply with the
13 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
14 plaintiff is not invoking section 55 of the California Civil Code and is not
15 seeking injunctive relief under the Disabled Persons Act at all.

16 2. Damages under the Unruh Civil Rights Act, which provides for actual
17 damages and a statutory minimum of \$4,000 for each offense.

18 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
19 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

20
21 Dated: February 5, 2020

CENTER FOR DISABILITY ACCESS

22 By: 

23 _____
24 Amanda Seabock, Esq.
25 Attorney for plaintiff
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